

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

FOCAL COMMUNICATIONS CORPORATION )  
OF ILLINOIS )  
)

Petition for Arbitration Pursuant to )  
Section 252(b) of the Telecommunications )  
Act of 1996 to Establish an Interconnection )  
Agreement with Illinois Bell Telephone )  
Company d/b/a Ameritech Illinois )

Docket 00-0027

SUPPLEMENTAL VERIFIED STATEMENT OF PATRICIA K. FLECK

ON BEHALF OF AMERITECH ILLINOIS

OFFICIAL FILE

ILL. C. C. DOCKET NO. 00-0027

Ameritech Exhibit No. 6

Witness \_\_\_\_\_

Date 3-16-00 Reporter CB

**SUPPLEMENTAL VERIFIED STATEMENT  
OF PATRICIA K. FLECK  
ON BEHALF OF AMERITECH ILLINOIS**

1     **Q.     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2     A.     Patricia K. Fleck, 225 West Randolph Street, Chicago, Illinois 60603.

3  
4     **Q.     ARE YOU THE SAME PATRICIA FLECK WHO PREVIOUSLY SUBMITTED A**  
5     **VERIFIED STATEMENT IN THIS PROCEEDING?**

6  
7     A.     Yes.

8  
9     **Q.     WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL VERIFIED**  
10    **STATEMENT?**

11  
12    A.     I will respond to the Verified Statements of the Illinois Commerce Commission Staff  
13    ("Staff") with respect to arbitration issue 3.

14  
15    **ISSUE 3:     EXISTING LOOP/TRANSPORT COMBINATIONS**

16  
17    **Q.     WHAT IS THE SUBJECT OF ISSUE 3?**

18  
19    A.     Issue 3 concerns Ameritech Illinois' provision of existing combinations of an unbundled  
20    loop and unbundled dedicated transport, as well as the "conversion" of special access  
21    services to such loop/transport combinations.

22  
23    **Q.     WHAT IS YOUR UNDERSTANDING OF STAFF'S POSITION ON THE ISSUE?**

24  
25    A.     Staff witness Garvey addresses this issue. Mr. Garvey agrees with most of Ameritech  
26    Illinois' positions regarding the extent to which it must provide existing loop/transport

1 unbundled network element ("UNE") combinations. Specifically, Mr. Garvey concludes  
2 that "Ameritech's definition of 'significant' local traffic should be approved"; "Focal  
3 should be required to self-certify that they are providing 'significant' local traffic, so long  
4 as auditing is not a part of that self-certification process"; "Focal is required to pay  
5 applicable termination charges" for special access service; and "Ameritech should be  
6 able to recover any administrative costs actually incurred as a result of a conversion."  
7 (Garvey Verified Statement at 15). I agree with Mr. Garvey on these points.  
8

9 **Q. HAVE THERE BEEN ANY DEVELOPMENTS REGARDING FOCAL'S**  
10 **POSITION ON THE DEFINITION OF A "SIGNIFICANT AMOUNT OF LOCAL**  
11 **EXCHANGE SERVICE" SINCE AMERITECH ILLINOIS SUBMITTED ITS**  
12 **INITIAL VERIFIED STATEMENTS?**  
13

14 **A.** Yes. On February 28, 2000, Focal, SBC Telecommunications Inc., and other incumbent  
15 LECs and CLECs jointly submitted a letter to the FCC discussing various issues with  
16 respect to the conversion of special access services to loop/transport combinations.  
17 (Schedule PKF-2) (attached). The parties submitting that letter proposed to the FCC  
18 three different measures for determining when a carrier is providing a "significant  
19 amount of local exchange service." These are set forth on page 2 of Schedule PKF-2.  
20 The Commission should make these agreed-to options part of the parties' interconnection  
21 agreement.

22 **Q. DOES MR. GARVEY DISAGREE WITH ANY OF AMERITECH ILLINOIS'**  
23 **POSITIONS?**  
24  
25

1 A. Yes, he disagrees on two points. First, as noted above, the FCC requires carriers seeking  
2 to convert a special access service to a loop/transport combination to certify that the  
3 combination is used to provide a significant amount of local exchange service to a  
4 particular customer. Ameritech Illinois' position is that when making such certifications,  
5 the service that Focal provides to Internet Service Providers ("ISP service") must be  
6 considered exchange access service, rather than local exchange service. Mr. Garvey,  
7 however, asserts that Focal should be able to classify the service it provides to ISPs as  
8 local exchange service because calls to ISPs are sometimes treated as local calls for  
9 purposes of reciprocal compensation and "the status of reciprocal compensation is still  
10 ambiguous and various judicial and regulatory proceedings are pending." (Garvey  
11 Verified Statement at 8-9).

12  
13 Second, Mr. Garvey does not believe that the FCC's orders support Ameritech Illinois'  
14 position that any special access services that Focal seeks to convert to loop/transport  
15 combinations must have been in place by a particular cut-off date, i.e., before the FCC  
16 released its Supplemental Order in CC Docket 96-98 on November 24, 1999 <sup>1/</sup> (a position  
17 that Ameritech Illinois is no longer asserting for purposes of this arbitration). Going  
18 beyond that narrow issue, however, Mr. Garvey also offers his interpretation of FCC  
19 Rule 315(b) (47 C.F.R. § 51.315(b)). He interprets that rule as not only prohibiting

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<sup>1/</sup> In the Matter of Implementation of the Local Competition Provisions of the  
Telecommunications Act of 1996, CC Docket 96-98, Supplemental Order (rel. Nov. 24, 1999).

1 incumbent LECs from separating UNEs that are already combined in its network, but  
2 also as requiring incumbent LECs to affirmatively combine for a CLEC any UNEs that it  
3 “ordinarily combines.” (Garvey Verified Statement at 12-15).

4  
5 **A. The Service That Focal Provides to ISPs**  
6 **is Not Local Exchange Service.**  
7

8 **Q. DO YOU AGREE WITH MR. GARVEY’S ANALYSIS AND CONCLUSION**  
9 **THAT THE SERVICE FOCAL PROVIDES TO ISPs CAN BE TREATED AS**  
10 **LOCAL EXCHANGE SERVICE FOR PURPOSES OF FOCAL’S SELF-**  
11 **CERTIFICATIONS?**  
12

13 A. No. The FCC has repeatedly held that the service LECs provide to ISPs is *exchange*  
14 *access service*. In the Matter of Deployment of Wireline Services Offering Advanced  
15 Telecommunications Capability, CC Dockets 98-147 et al., Order on Remand, ¶ 35 (rel.  
16 Dec. 23, 1999) (“Advanced Services Remand Order”) (“we conclude that the service  
17 provided by the local exchange carrier to the ISP is ordinarily exchange access service  
18 because it enables the ISP to transport the communication initiated by the end-user  
19 subscriber located in one exchange to its ultimate destination in another exchange”).  
20

21 Mr. Garvey recognizes this fact (at 8), but fails to acknowledge the unavoidable  
22 conclusion that, because the service that Focal provides to ISPs is exchange access  
23 service, it cannot, by definition, be local exchange service or considered local exchange  
24 service by Focal in certifying that a loop/transport combination is used to provide a  
25 “significant amount of local exchange service.” Instead, Mr. Garvey confuses the self-

1 certification issue with the treatment of ISP-bound traffic for purposes of reciprocal  
2 compensation, arguing that alleged legal ambiguity regarding the latter issue somehow  
3 affects Focal's self-certifications. The two issues, however, are distinct from one  
4 another.

5  
6 It is true that the FCC has stated that carriers could agree between themselves to treat  
7 ISP-bound traffic as local traffic *for purposes of reciprocal compensation* in their  
8 interconnection agreements. It is also true that the FCC has stated that, in the absence of  
9 a specific federal regulation, state commissions could require carriers to treat ISP-bound  
10 traffic as local traffic *for purposes of reciprocal compensation*. Contrary to Mr. Garvey's  
11 assumption, however, these statements are irrelevant to the issue here. With respect to  
12 self-certification, the issue is what service Focal provides to ISPs; the issue is *not* what  
13 compensation scheme applies between LECs for traffic delivered to ISPs. The FCC has  
14 explicitly stated that CLECs seeking to convert a special access service to a  
15 loop/transport combination must self-certify that the loop/transport combination will be  
16 used "to provide a significant amount of *local exchange service* . . . to a particular  
17 customer." Supplemental Order, ¶ 5 and n.9 (emphasis added). The FCC also has  
18 explicitly stated that the service that LECs provide to ISPs is *not* local exchange service,  
19 but rather is exchange access service. Advanced Services Remand Order, ¶ 35. The *only*  
20 conclusion that the FCC's orders support is that the service that Focal provides to ISPs  
21 must be classified as exchange access and cannot be "considered" local exchange service

1 for purposes of a CLEC's self-certifications — regardless of how traffic that is delivered  
2 over that service is treated for the entirely separate, limited purpose of reciprocal  
3 compensation.

4  
5 **Q. IS AMERITECH ILLINOIS' POSITION CONSISTENT WITH THE FCC'S**  
6 **SUPPLEMENTAL ORDER?**  
7

8 A. Yes. When discussing the duty to provide existing loop/transport combinations in the  
9 Supplemental Order, the FCC made clear that carriers could *not* convert to UNE  
10 combinations those special access services used exclusively to provide exchange access  
11 service. See Supplemental Order, ¶ 4. The FCC further stated that it had “intended to  
12 compile a complete record in the Fourth FNPRM prior to determining whether IXCs may  
13 employ unbundled network elements solely to provide exchange access service.” Id.  
14 That is why the FCC created the requirement that the loop/transport UNE combination be  
15 used to provide a “significant amount of local exchange service.” Id., ¶ 5. If Focal could  
16 convert a special access service used to provide service to an ISP to a loop/transport UNE  
17 combination, it by definition would be “employ[ing] unbundled network elements *solely*  
18 to provide exchange access service,” in direct violation of the Supplemental Order.

19  
20 **Q. HOW DO YOU RESPOND TO MR. GARVEY'S STATEMENT THAT “THE FCC**  
21 **HAS GIVEN NO INDICATION THAT THEY WOULD REQUIRE CARRIERS**  
22 **TO CERTIFY THAT ISP CALLS WILL NOT BE TREATED — FOR PURPOSES**  
23 **OF TABULATING THE EXTENT OF LOCAL TRAFFIC — AS LOCAL.**  
24 **CONSEQUENTLY, FOCAL SHOULD NOT HAVE TO SELF-CERTIFY THAT**  
25 **THEY ARE TREATING INTERNET ACCESS CALLS AS INTERSTATE”?**  
26 **(GARVEY VERIFIED STATEMENT AT 9).**  
27

1 A. Mr. Garvey is drawing the wrong conclusion from the FCC's failure to state the obvious  
2 — that exchange access service is not local exchange service. The FCC has repeatedly  
3 ruled that the service that a LEC provides to ISPs is exchange access service. Thus, there  
4 was no reason for the FCC to state that such exchange access service would not be  
5 treated as local exchange service for self-certification purposes, because exchange access  
6 service and local exchange service are mutually exclusive.

7  
8 **Q. MR. GARVEY PROPOSES THAT THE INTERCONNECTION AGREEMENT**  
9 **SHOULD SIMPLY REQUIRE THAT FOCAL "SELF-CERTIFY THAT THEIR**  
10 **TABULATION OF TRAFFIC IS CONSISTENT WITH STATE AND FEDERAL**  
11 **LAWS, RULES AND REGULATIONS." (GARVEY VERIFIED STATEMENT AT**  
12 **9). IS THAT LANGUAGE ACCEPTABLE TO AMERITECH ILLINOIS?**

13  
14 A. While I agree that Focal's self-certifications must comply with state and federal law,  
15 adopting such generic language would only be a recipe for conflict and dispute, as it  
16 would open the door for Focal to adopt a self-serving reading of federal law that  
17 purportedly would justify any and all conversions. Indeed, Mr. Garvey recognizes  
18 elsewhere that if the definition of what constitutes a "significant amount of local  
19 exchange service" is "left ambiguous," "future conflicts would be expected." (Garvey  
20 Verified Statement at 7). Thus, it makes sense to define the self-certification standard in  
21 some detail now, in order to minimize the opportunity for abuse of the system and the  
22 risk of future conflict. Ameritech Illinois has proposed a reasonable, specific definition  
23 of a "significant amount of local exchange service," and that definition should be  
24 approved by the Commission in this case.

**B. FCC Rule 315(b) and Existing Loop/Transport Combinations.**

**Q. YOU STATED EARLIER THAT MR. GARVEY DISAGREES WITH AMERITECH ILLINOIS' POSITION THAT SPECIAL ACCESS SERVICES HAD TO BE IN PLACE ON NOVEMBER 24, 1999 TO BE ELIGIBLE FOR CONVERSION TO A LOOP/TRANSPORT COMBINATION. PLEASE COMMENT.**

**A.** Since I submitted my Verified Statement, Ameritech Illinois has decided to no longer assert this position for purposes of this arbitration. Accordingly, Ameritech Illinois no longer proposes any cut-off date to determine which special access services are eligible for conversion by Focal.

**Q. GIVEN AMERITECH ILLINOIS' REVISED POSITION, IS MR. GARVEY'S ANALYSIS OF THE ISSUE STILL PERTINENT?**

**A.** No. Given that the specific "cut-off date" issue will be resolved without the need for any arbitration ruling, there is no basis for the Commission to evaluate and rule on Mr. Garvey's legal analysis of Rule 315(b).

**Q. DOES AMERITECH ILLINOIS AGREE WITH MR. GARVEY'S READING OF RULE 315(B)?**

**A.** No. Ameritech Illinois strongly disagrees with Mr. Garvey's position. Mr. Garvey reads FCC Rule 315(b) as applying to any UNEs that are "ordinarily combined" by the incumbent LEC, rather than applying only to those UNEs that are already combined at the time of the CLEC's request. While the FCC at one time interpreted Rule 315(b) as prohibiting incumbent LECs from separating UNEs that are "ordinarily combined" (First

1 Report and Order, ¶ 296), it effectively abandoned that position in the UNE Remand  
2 Order.<sup>2/</sup> Despite several CLEC requests to do so in that proceeding, the FCC declined to  
3 “reaffirm” its prior broad reading of Rule 315(b):

4 A number of commenters argue that we should reaffirm the Commission’s  
5 decision in the *Local Competition First Report and Order*. In that order the  
6 Commission concluded that the proper reading of “currently combines” in rule  
7 51.315(b) means “ordinarily combined within their network, in the manner which  
8 they are typically combined.” Incumbent LECs, on the other hand, argue that rule  
9 51.315(b) only applies to unbundled network elements that are currently  
10 combined and not to elements that are “normally” combined. Again, because this  
11 matter is currently pending before the Eighth Circuit, we decline to address these  
12 arguments at this time.

13  
14 UNE Remand Order, ¶ 479. Moreover, the FCC specifically declined to apply its prior  
15 broad reading of Rule 315(b) to loop/transport combinations:

16 Thus, although in this Order, we neither define the EEL as a separate unbundled  
17 network element *nor interpret rule 51.315(b) as requiring incumbents to combine*  
18 *unbundled network elements that are ‘ordinarily combined,’* we note that in  
19 specific circumstances, the incumbent is presently obligated to provide access to  
20 the EEL. In particular, the incumbent LECs may not separate loop and transport  
21 elements that are *currently combined and purchased through special access*  
22 *tariffs*.

23  
24 UNE Remand Order, ¶¶ 480 (emphasis added). Indeed, the FCC repeatedly emphasized  
25 that the “conversion” duty is limited to *existing* combinations of loops and transport used  
26 for special access. *Id.*, ¶ 480 (“*To the extent an unbundled loop is in fact connected to*  
27 *unbundled dedicated transport*, the statute and our rule 51.315(b) require the incumbent

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<sup>2/</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (rel. Nov. 5, 1999) (“UNE Remand Order”).

1 to provide such elements to requesting carriers in combined form.”) (emphasis added);  
2 id., ¶ 486 (“under existing law, a requesting carrier is entitled to obtain *existing*  
3 *combinations* of loop and transport”) (emphasis added); id., (“to the extent those  
4 unbundled elements are *already combined* as a special access circuit, the incumbent may  
5 not separate them under rule 51.315(b)”) (emphasis added). Thus, it is clear that the duty  
6 to convert special access service to loop/transport combinations applies only to loop and  
7 transport facilities that are already combined.

8  
9 **Q. IS THERE ANY OTHER SUPPORT FOR AMERITECH ILLINOIS' POSITION?**

10 A. Yes. In reinstating Rule 315(b), the United States Supreme Court explained that the rule  
11 “forbids an incumbent to separate *already-combined* network elements before leasing  
12 them to a competitor.” AT&T Corp. v. Iowa Utilities Board, 119 S. Ct. 721, 736-37  
13 (1999) (emphasis added). Furthermore, the *FCC itself* told the Supreme Court that Rule  
14 315(b) is aimed at preventing incumbent LECs from ““disconnect[ing] *previously*  
15 *connected* elements.”” Id. at 737 (quoting Reply Brief of the FCC, at 23) (emphasis  
16 added). These quotes are consistent with Ameritech Illinois’ reading of Rule 315(b), not  
17 with Mr. Garvey’s.

18  
19 **Q. MR. GARVEY CONTENDS (AT 12) THAT “FOCAL SHOULD BE ENTITLED**  
20 **TO ORDER AN EEL, EVEN FOR COMBINATIONS WHICH ARE NOT NOW IN**  
21 **PLACE.” PLEASE RESPOND.**

22  
23 A. Mr. Garvey’s position directly conflicts with federal law and seeks to reinstate FCC rules  
24 that have been vacated as violating the Telecommunications Act of 1996 (“1996 Act”).

1 First, the FCC unambiguously refused to require incumbent LECs to provide  
2 loop/transport combinations that are not already combined in a special access service.  
3 UNE Remand Order, ¶¶ 478, 480. Second, Mr. Garvey is effectively asking the  
4 Commission to reinstate FCC Rules 315(c)-(f), which at one time required incumbents to  
5 affirmatively combine UNEs for CLECs. The FCC, of course, declined that very request,  
6 noting that Rules 315(c)-(f) have been vacated by the courts and have not been reinstated.  
7 Id., ¶¶ 478-81. Moreover, the Eighth Circuit vacated Rules 315(c)-(f) specifically  
8 because they violated the 1996 Act. Iowa Utilities Board v. FCC, 120 F.3d 753, 813 (8th  
9 Cir. 1997) ("the FCC's rule requiring incumbent LECs, rather than the requesting  
10 carriers, to recombine network elements . . . cannot be squared with the terms of  
11 subsection 251(c)(3) . . . [which] unambiguously indicates that requesting carriers will  
12 combine the unbundled elements themselves.") Simply put, Rules 315(c)-(f) remain  
13 vacated, and Ameritech Illinois cannot be required to affirmatively combine UNEs at a  
14 CLEC's request.

15  
16 For these very reasons, the Ohio Public Utilities Commission recently rejected a request  
17 to effectively reinstate Rules 315(c)-(f) and require Ameritech to affirmatively combine  
18 UNEs:

19 In regard to this issue, the Panel agrees with Ameritech. As Ameritech pointed  
20 out, the FCC declined to require the EEL as a separate network element because  
21 the issue [of combining UNEs] is still before the Eighth Circuit Court [UNE  
22 Remand Order, ¶ 478]. Also, as pointed out by Ameritech, the Eighth Circuit  
23 vacated FCC Rules 315(c)-(f), which would have required Ameritech to combine

1 network elements for ICG. Thus, even if we were inclined to agree with ICG on  
2 this issue, we believe it would be unwise of the Panel to recommend that this  
3 Commission not follow the Eighth Circuit ruling. The Panel agrees with  
4 Ameritech that it would not best serve the public interest if the Commission were  
5 to require Ameritech to provide EELs to ICG or an[y] other NECs prior to a final  
6 determination on this issue by the Eighth Circuit and the FCC.<sup>3/</sup>

7  
8 I would note that the Georgia state commission order cited by Mr. Garvey (at 14-15)  
9 considered the same arguments by the same CLEC, ICG Telecom, as the Ohio  
10 commission, but reached a different result. The Ohio commission's decision, however, is  
11 better reasoned and consistent with the UNE Remand Order. In addition, the  
12 Pennsylvania state commission order cited by Mr. Garvey (at 15) predates the UNE  
13 Remand Order and thus is entirely irrelevant.

14  
15 **Q. MR. GARVEY (AT 12) ALSO CONTENTS THAT FOCAL SHOULD NOT HAVE**  
16 **TO "ORDER SPECIAL ACCESS AND THEN REQUEST THAT IT BE**  
17 **CONVERTED TO" A LOOP/TRANSPORT COMBINATION BECAUSE THAT**  
18 **"CIRCUITOUS ROUTE IS NEEDLESS AND DELAYS COMPETITION."**  
19 **PLEASE COMMENT.**

20  
21 **A.** This position again ignores federal law and, if accepted, would allow Focal to end-run the  
22 Eighth Circuit's vacatur of Rules 315(c)-(f). Rule 315(b) and the UNE Remand Order  
23 entitle Focal to obtain access to existing loop/transport combinations only. If the loop  
24 and transport elements that Focal desires are not already combined, it must either

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<sup>3/</sup> In the Matter of ICG Telecom Group, Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio, Case No. 99-1153-TP-ARB, Arbitration Panel Report at 20, 2000 Ohio PUC LEXIS 16 (Jan. 11, 2000). The Ohio Commission recently affirmed the Arbitration Panel's recommendation in the Arbitration Award in that case. Id., Arbitration Award at 14 (Pub. Utils. Comm'n of Ohio, Feb. 24, 2000).

1 purchase them as separate UNEs and combine them itself, or it must wait until they have  
2 been combined as part of Ameritech Illinois' network. As the FCC wrote, "incumbent  
3 LECs may not separate loop and transport elements that are *currently combined and*  
4 *purchased through special access tariffs.*" UNE Remand Order, ¶ 480 (emphasis added).  
5 It is not "circuitous" to require Focal to comply with federal law.  
6

7 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL VERIFIED STATEMENT?**

8  
9 **A. Yes.**

ORIGINAL

Bell Atlantic  
1300 I Street, Suite 400N  
Washington, DC 20005  
202 336-7888 Fax 202 336-7922  
E-Mail: susanne.guyer@BellAtlantic.com

Susanne Guyer  
Assistant Vice President  
Federal Regulatory

EX PARTE OR LATE FILED



February 29, 2000

RECEIVED

FEB 29 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYEx Parte

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: CC Docket No. 96-98: Implementation of the Local Competition Provisions  
of the Telecommunications Act of 1996

Dear Ms. Salas:

On behalf of Bell Atlantic, Intermedia Communications, BellSouth Corporation, SBC  
Telecommunications, Inc., Focal Communications, Time Warner Telecom, GTE Service  
Corporation, U.S. West, Inc., and WinStar Communications, Inc., I submit the attached  
letter for inclusion in the above-referenced docket.

Pursuant to section 1.1206 of the Commission's rules, an original and one copy of this  
notice are being submitted.

Sincerely,

  
Attachment

No. of Copies rec'd 041  
List ABCDE

February 28, 2000

The Honorable William E. Kennard, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. Room 8-B-201  
Washington, DC 20554

The Honorable Susan Ness, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-B-115  
Washington, DC 20554

The Honorable Harold W. Furchtgott-Roth, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. Room 8-A-302  
Washington, DC 20554

The Honorable Michael K. Powell, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A-204  
Washington, DC 20554

The Honorable Gloria Tristani, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., Room 8-C-302  
Washington, DC 20554

Re: Implementation of the Local Competition Provisions of the Telecommunications Act of  
1996, CC Dkt. No. 96-98

Dear Chairman Kennard and Commissioners:

The Third Report and Order, as modified by the Supplemental Order, addressed the circumstances under which carriers may purchase loop/transport combinations as unbundled network elements (UNEs). The undersigned believe that the industry could benefit from a further clarification of that Order. Based on the text and the intent of the Third Report and Order and the Supplemental Order, as well as the ex parte referenced in footnote nine of the Supplemental Order, the undersigned believe that, under existing rules and policies reflected in those Orders, a requesting carrier may purchase loop/transport combinations only if one of the three options described below is met.

---

Option 1

- The telecommunications carrier is the exclusive provider of an end user's local exchange service and the loop transport combination originates at a customer's premises and terminates at the telecommunications carrier's collocation arrangement; and
- this option does not allow loop/transport combinations to be connected to ILEC services.

- or -

Option 2

- The telecommunications carrier provides local exchange and exchange access service to the end user customer and handles at least one third of the end user customer's local traffic measured as a percent of total end user customer lines; and
- for DS1 level and above, at least 50% of the activated channels on the loop portion of the loop and transport combination have at least 5% local voice traffic individually; and
- the entire loop facility has at least 10% local voice traffic; and
- the loop/transport combination originates at a customer's premises and terminates at the telecommunications carrier's collocation arrangement; and
- if a loop/transport combination includes multiplexing, each of the multiplexed facilities must meet the above criteria for this option. For example, if DS1 loops are multiplexed onto DS3 transport, each of the individual DS1 facilities must meet the criteria for this option in order for the DS1/DS3 loop/transport combination to qualify for UNE treatment; and
- this option does not allow loop/transport combinations to be connected to ILEC services.

- or -

Option 3

- For the conversion of services to combinations of unbundled network elements, at least 50% of the activated channels are used to provide originating and terminating local dial tone service and at least 50% of the traffic on each of these local dial tone channels is local voice traffic (measured based on the incumbents local exchange area);<sup>1</sup> and
- the entire loop facility has at least 33% local voice traffic; and
- if a loop/transport combination includes multiplexing, each of the multiplexed facilities must meet the above criteria for this option. For example, if DS1 loops are multiplexed onto DS3 transport, each of the individual DS1 facilities must meet the criteria for this option in order for the DS1/DS3 loop/transport combination to qualify for UNE treatment; and
- this option does not allow loop/transport combinations to be connected to ILEC services.

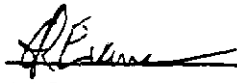
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<sup>1</sup> The signatory ILECs interpret the existing orders as requiring combinations to terminate in a collocation facility, however, they agree to waive that requirement only with respect to option three, subject to the other limitations of this letter. All of the signatories agree that the absence of a collocation requirement for Option 3 cannot be read to suggest that UNE loops or loop/transport combinations can be connected to ILEC services.

In order to confirm reasonable compliance with these requirements, the undersigned agree that certain auditing rights are appropriate. It is not the parties' intention that such audits be routine practice, but rather would be invoked when the ILEC has concern that a UNE purchaser has not met the criteria for significant local service. In particular, the parties agree that auditing consistent with the following general guidelines would be reasonable and appropriate.

- 1) The ILEC may, upon 30 days written notice to a carrier that has purchased loop/transport combinations as UNEs, conduct an audit to ascertain whether those loop/transport combinations were eligible for UNE treatment at the time of certification and on an ongoing basis thereafter.
- 2) The CLEC shall make reasonable efforts to cooperate with any audit by the ILEC and shall collect, compile, maintain and, in connection with an audit, provide the ILEC with relevant records (for example call detail records) for all traffic that has been transmitted over all loop/transport combinations subject to the audit. CLECs must maintain auditable records for at least 12 months, or, in the event of an audit or dispute, until such audit or dispute is resolved, whichever is longer.
- 3) An independent auditor hired and paid for by the ILEC shall perform any audits, *provided, however*, that if an audit reveals that a certification by the CLEC does not meet or has not met the certification requirements, the CLEC shall reimburse the ILEC for the cost of the audit.
- 4) An audit shall be performed using industry audit standards during normal business hours, unless there is mutual agreement otherwise.
- 5) The ILEC may not exercise its audit rights with respect to a particular CLEC (excluding affiliates) more than twice in any calendar year, unless an audit finds noncompliance.
- 6) Audits conducted by the ILEC for the purpose of determining compliance with certification criteria are "over and above" any audit rights that the ILEC may have pursuant to an interconnection agreement between the CLEC and the ILEC.

We would be happy to address any questions you might have regarding our proposal.



/s/ Gordon R. Evans  
Vice President Federal Regulatory  
Bell Atlantic

/s/ Heather B. Gold  
Vice President- Industry Policy  
Intermedia Communications

/s/ Robert T. Blau  
Vice President Executive and Federal Regulatory  
Affairs  
BellSouth Corporation

/s/ Priscilla Hill-Ardoin  
Senior Vice President - Federal  
Regulatory  
SBC Communications Inc.

/s/ Richard Metzger  
Vice President Regulatory & Public Policy  
Focal Communications

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Affairs  
Time Warner Telecom

/s/ Alan F. Ciamporcero  
Vice President - Regulatory Affairs  
GTE Service Corporation

/s/ Melissa Newman  
Vice President- Regulatory Affairs  
U.S. West, Inc.

/s/ Russell C. Merbeth  
Vice President, Legal and Regulatory  
Affairs  
WinStar Communications, Inc.

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J. Goldstein  
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/s/ Heather B. Gold  
Vice President- Industry Policy  
Intermedia Communications

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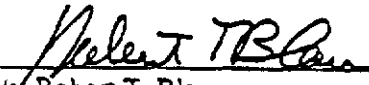
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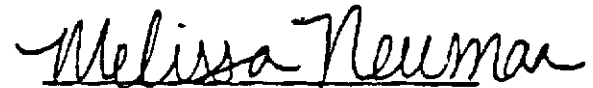
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State of Illinois     )  
                              )  
County of Cook        )

**VERIFICATION**

I, Patricia K. Fleck, being first duly sworn, do on oath depose and state that I have read the foregoing Supplemental Verified Statement, am familiar with the contents thereof, and that such contents are true and correct to the best of my knowledge, information, and belief.

Patricia K. Fleck

Subscribed and sworn to before  
me this 6th day of March, 2000

Barbara L. Baker  
Notary Public

